



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175858

PRELIMINARY RECITALS

Pursuant to a petition filed on July 27, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Clark County Department of Social Services regarding FoodShare benefits (FS), a hearing was held on August 29, 2016, by telephone.

The record was held open for 10 days to allow the petitioner to submit any exhibits including the medical records of [REDACTED] that she mentioned she wished to submit.

The issue for determination is whether the agency correctly determined petitioner's liability for a FS overpayment in the amount of \$760 in Claim [REDACTED]

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Clark County Department of Social Services
Courthouse
517 Court Street, Rm. 502
Neillsville, WI 54456-0190

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Clark County.
2. Petitioner was an adult in the household of of a seven-person FS case including his mother, [REDACTED], and her husband [REDACTED]. [REDACTED] was included in the household in January 2016 but he had been reported as not employed and the family was receiving FS based only on [REDACTED]'s income.
3. On February 8, 2016, [REDACTED] completed a six month report form (SMRF) indicating that [REDACTED] was still part of the household.
4. On February 8, 2016, the agency received information of unearned unemployment compensation being paid to [REDACTED]. The agency included [REDACTED]'s unearned income in the budget and the FS amount reduced. The agency sent notice on February 9, 2016 informing petitioner that her FS allotment would be reduced for March 2016 from \$426 to \$97.
5. On February 18, 2016 [REDACTED] filed a new SMRF reporting that [REDACTED] was no longer living in the household. The agency recalculated the FS allotment and granted \$423 to the household of six.
6. On February 19, 2016 [REDACTED] filed an application for FS as a one-person group living at the same address [REDACTED] as the petitioner's six-person group. [REDACTED] confirmed this address at the interview for his application.
7. The agency sought an investigation to determine where [REDACTED] was living. The investigator visited the home on March 19, 2016 and [REDACTED] was present in the home on [REDACTED] at the time of the visit.
8. Records from unemployment compensation show [REDACTED] living at [REDACTED] [REDACTED]
9. [REDACTED] remained living in the home with the family in March and April 2016.
10. [REDACTED] was an adult in the household in March and April 2016.
11. The agency calculated the overpayment based on the amount of FS received by the household compared to the amount it should have received if [REDACTED] had been included in the household for March and April 2016.
12. The agency issued notice informing petitioner of liability for a FS overpayment in the amount of \$760 in Claim [REDACTED]
13. Petitioner appealed.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). A Notification of FoodShare Overissuance must be issued. *FoodShare Eligibility Handbook*, §7.3.1.8.

Biological, adoptive and step parents and their children under the age of 22 must be included in the same household for FS purposes when they live together. *FSH*, §3.3.1.3; also see 7 Code of Federal Regulations (CFR), §273.1(b)(1).

All adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

FoodShare Eligibility Handbook, Appendix 7.3.1.2; see also 7 C.F.R. §273.18(a)(4).

At hearing, petitioner was represented by his mother, [REDACTED] [REDACTED] who is also determined liable for this overpayment. [REDACTED] [REDACTED]'s arguments avoided the question of her liability. She questioned why her son would be liable (which is a result of the provision quoted above relating to liability of all adults in the household), and whether the agency maintained documents relating to her reports of [REDACTED] being in or out of the home, and whether [REDACTED] is also being held liable. [REDACTED] stated that she has physician progress notes indicating that [REDACTED] lived with his father at some point and that he was very angry with [REDACTED] because she asked for financial assistance from him. Those records were submitted but were not persuasive as to whether [REDACTED] was residing in the home. [REDACTED] also stated that she reported [REDACTED] in or out of the home as appropriate. [REDACTED] did not testify. [REDACTED] conceded that [REDACTED] left the home finally in May 2016. But, [REDACTED] offered no specific denial or supporting argument that [REDACTED] was not residing in the home in March or April. I find the timing of the report of [REDACTED] out of the home in February to be questionable based on the timing of the report immediately after the agency informed [REDACTED] that her FS would reduce considerably. [REDACTED] presence in the home when the investigator visited is also a strong indication of his residence. [REDACTED]'s case simply did not rebut the agency's findings and presentation.

CONCLUSIONS OF LAW

The agency was correct in its determination petitioner's liability for a FS overpayment in the amount of \$760 because he was an adult in the household at the time of the overpayment in March and April 2016.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 26th day of September, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 26, 2016.

Clark County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability